IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 220 of 1987
With
FIRST APPEAL No. 1285 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LAXMIBEN BUDHABHAI PADHIYAR & 5 - Appellant(s)
Versus
JAYANTIBHAI CHHOTABHAI & 3 - Defendant(s)

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Appearance :
MR MC SHAH FOR MR SUNIL M SHAH for Appellant(s) : 1 - 6.
NONE FOR Respondent Nos.1 to 4.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 03/08/2007

COMMON JUDGMENT

1. Heard Mr.M.C. Shah, learned counsel for the under the authority of Mr.Sunil M.Shah, learned counsel for the

appellants. None for the respondent Nos.1 to 4 though the name of Mr.K.F. Dalal, learned counsel is shown.

2. Mr.K.F. Dalal, learned counsel also appears for appellants in First Appeal No.1285 of 1987. Yesterday also none appeared for the appellants of First Appeal No1285 of 1987, therefore, I had adjourned the case for today, under a high hope that Mr.K.F. Dalal, learned counsel or, somebody under his authority, would appear in the Court, but I am disillusioned, nobody appears for Mr.K.F. Dalal, learned counsel. Under the circumstances, I dismiss the First Appeal No.1285 of 1987 and proceeded ex-parte in First Appeal No.220 of 1987.

3. Mr.Shah, learned counsel for the appellant – claimant submitted that the tribunal was unjustified in holding the deceased negligent to the extent of 50% and erred in deducting 50% amount from the entitlement.

4. After taking me through the pleadings of the parties and evidence of Bhupendrabhai (Exh.46) and statement of Mohanbhai, investigating officer who recorded statement of Bhupendrabhai, during the course of investigating and

statement of the driver and conductor of the offending bus , contended that from the evidence of Bhupendrabhai it would clearly appear that the deceased Budhabhai Padhiyar fell from the running bus and under the circumstances, the tribunal could not hold that the deceased was hanging outside the bus and suddenly fell. He also submitted that the statement of Budhabhai, eye witness is natural, he is an independent eye witness, therefore, his statement should assume absolute importance. Referring to the statement of the driver and the conductor, it was contended that if the said driver and conductor have said that nobody was hanging outside the bus, then, the said statement would support the statement of Bhupendrabhai, eye witness and the tribunal should have held that the deceased was a passenger in the bus and because of the rash and negligent driving by the driver of the bus, the deceased fell from the bus.

5. The driver, conductor and owner of the bus had clearly pleaded that the deceased was not travelling in the bus and if he was a ticketless passenger hanging outside the bus, then, they do not know that such a person was

hanging outside the bus and had fallen.

6. True it is that during the course of statement, witness stated that nobody was hanging outside the bus, but the same would not provide any solace to the present appellants in view of the statement of Mohanbhai, investigating officer.

7. After Budhabhai had fallen from the bus, Bhupendrabhai had taken Budhabhai in rickshaw to the nearest hospital, from there he was transferred to Vadodara, where, he breathed his last. At the time when the Budhabhai was taken to the hospital, nobody says that he was carrying a ticket with him. After the death of Budhabhai, investigating officer – Mohanbhai started making investigation, he recorded statement of Bhupendrabhai, the said eye-witness informed the investigating officer that number of passengers were hanging outside the bus and one had fallen.

8. Mr.Shah, learned counsel after taking me through the statement of Mohanbhai said that if the statement is read in its true perspective, it would mean that one man fell

from the bus and would not mean that one man from amongst the passengers or persons hanging outside the bus had fallen. If the statement of Bhupendrabhai recorded by Mohanbhai is read in its true perspective and in sequence in which he has given statement then it would be clear that he wanted to say that number of persons were hanging outside the bus and one had fallen from amongst them. If this was the earliest version of Bhupendrabhai, eye witness, then any development made by him would amount to contradiction from his earlier statement without any explanation and without any authority. It would only mean that he wanted to help and assist the case and cause of the claimants.

9. Mr.Shah, learned counsel submitted that if the driver and conductor had categorically stated that nobody was hanging outside the bus, then, such statement should clinch the issue and there would be no authority with the court to hold otherwise. In the opinion of this Court, such an argument is not available to a party, because, a tribunal always has a jurisdiction to scrutinise, marshal and assess the oral evidence lead by the party. To come to a positive finding, it is not necessary for a Judge that

while appreciating evidence he should rely upon one set of the evidence only. While sifting grain from chaff, if the court finds that each of the party is making untrue statement in the Court, it is the duty of the court to reach to a conclusion, which, under the circumstances, would be most reasonable.

10. In the present case, the Tribunal, after considering the statements of the parties, if has chosen to rely upon statement of Mohanbhai, eye witness and has recorded a finding that the first version of Bhupendrabhai, the eye witness, was that number of persons were hanging outside the bus and one of them had fallen from amongst them, then, no wrong with the finding can be found. If a person takes a risk of travelling by hanging outside the bus, then, he certainly plays risk with the fraud and endangers his own life. Such negligence on the part of such a passenger or a person hanging outside the bus, cannot be lightly ignored.

11. The Tribunal was certainly justified in holding the deceased Budhabhai of negligence to the extent of 50%.

12.I find no reason to interfere. The First Appeal No.220 of 1987 deserves to and is accordingly dismissed. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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